

Persons who and permanently affix tangible personal property to real estate act as construction contractors. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

January 4, 1999

Dear Mr. Xxxxxx:

This letter is in response to your letter dated October 12, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Our business builds laboratories and we anticipate building one in CITY. We need to find out if sales tax is applicable on a research and development lab which would be in CITY. The existing building was apparently used for a lab by the previous occupant. The occupant has already removed most all of the furnishings and wants to start over with a new facility.

Our portion of the job would consist of installation of laboratory casework and countertops. We would install some sinks as part of our contract, but the connection of those sinks is left to the plumbing contractor selected by the owner. We also would be installing some electric receptacles as part of our casework, but they also must be connected by an electric contractor from the area. We would have nothing to do with any structural changes in the building, only the installation of furnishings.

For work of this type, does sales tax apply? If so, at what percentage? If it does apply, are we required to collect the tax? Is it necessary for us to register with the State of Illinois for that purpose?

Please respond as soon as possible, the owner would like to get this job done quickly so they can get to work, also.

Persons who take tangible personal property and permanently affix it to real estate act as construction contractors. See the enclosed copy of 86 Ill. Adm. Code 130.1940. Generally, tangible personal property that is permanently incorporated into real estate is considered an improvement to real estate.

Construction contractors incur Use Tax and local Retailers' Occupation Tax reimbursement liabilities, payable to their suppliers, based upon their cost price of items which they purchase for subsequent incorporation into real estate. See the enclosed copy of 86 Ill. Adm. Code 130.2075. If construction contractors pay their suppliers the appropriate Use Tax and local Retailers' Occupation Tax rate for their suppliers' location, then construction contractors incur no further liability. If such materials are purchased without paying tax, such as from unregistered out-of-State suppliers, the purchasing contractors must self-assess and pay the Use Tax directly to the Department.

Taxpayers who have paid sales tax on tangible personal property that was properly due to another State will be allowed a credit against their Illinois Use Tax liability if they can demonstrate through documentation in their records that the tax was actually paid. This is because the Illinois Use Tax Act provides that in order to prevent actual or likely multistate taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State, 35 ILCS 105/3-55(d). See 86 Ill. Adm. Code 150.310(a)(3), enclosed. This credit is only for the amount of tax properly due and paid to the other State, and taxpayers remain liable for any difference between the tax already properly paid and that due under the Illinois Use Tax Act.

When billing construction contract jobs, contractors are prohibited from charging their customers an amount designated as "tax" because the construction contractors bear the legal incidence of the tax. The legal incidence does not fall upon the customers because the customers are not buying tangible personal property from contractors when they enter into contracts for improvements to real estate. Contractors may, however, contract for customers to reimburse them for an amount equal to the tax.

If contractors also make "over-the-counter" sales of items that the contractors are not permanently attaching to real estate, such contractors act as retailers and must remit Retailers' Occupation Tax on such transactions as described above. See 86 Ill. Adm. Code 130.1940(b).

An exception is provided for construction contractors for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunications systems. These contracts do not constitute engaging in a business of selling tangible personal property at retail within the meaning of the Retailers' Occupation Tax Act if they are sold at one specified contract price. See 35 ILCS 120/1. In those instances, the contractors owe Use Tax on their cost price of the tangible personal property that is transferred.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

ST 99-0009-GIL

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Encl.